Special Report

Eligible Uses of Coronavirus State and Local Fiscal Recovery Funds

May 14, 2021

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Introduction

On March 11, 2021, President Joe Biden signed into law the $1.9 trillion **American Rescue Plan Act of 2021 (ARPA)** (P.L. 117-2). Section 9901 of ARPA established the $350 billion **Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds)**, providing federal payments to all state, local, tribal, and territorial governments in the United States. The law provides a total of **$195.3 billion** to the 50 states and the District of Columbia; **$65.1 billion** to county governments; **$45.57 billion** to "metropolitan cities" (with populations generally above 50,000); **$19.53 billion** to "non-entitlement communities" (with populations generally less than 50,000); **$20 billion** to tribal governments; and **$4.5 billion** to the five U.S. territories.

In general, ARPA provides four eligible uses of Fiscal Recovery Funds. They are:

- Respond to the COVID-19 public health emergency and its negative economic impacts
- Provide premium pay to essential workers or grants to employers with essential workers
- Replace lost, delayed, or decreased revenue
- Make necessary investments in water, sewer, or broadband infrastructure

On May 10, 2021, the U.S. Department of the Treasury released a 151-page Interim Final Rule providing guidance on the eligible uses of the Fiscal Recovery Funds. All payments are to remain available until **December 31, 2024**, with funded projects completed no later than **December 31, 2026**. Amounts not spent or used for ineligible purposes will be repaid to Treasury.

Upon publication of the Interim Final Rule in the Federal Register (which is likely to occur during the week of May 17, 2021), Treasury encourages stakeholders to submit public comments on the Interim Final Rule at regulations.gov. The public comment period will be open for 60 days after publication in the Federal Register (i.e., until mid-July 2021). TFG will provide additional information regarding commenting on the Interim Final Rule.

On May 10, 2021, the Treasury Department also released additional Fiscal Recovery Funds-related documents, including:

- Fact Sheet
- Frequently Asked Questions document (Treasury will be updating this document periodically in response to questions received from stakeholders)
- Quick Reference Guide
- Allocations for Counties
- Allocation Methodology for Counties
- Allocations for Metropolitan Cities
- Allocation Methodology for Metropolitan Cities
- Allocations for Non-entitlement Communities (aggregate state totals)
- Allocation Methodology for Non-entitlement Communities (aggregate state totals)
- Allocations for States
- Allocation Methodology for States
- Allocation Methodology for Tribal Governments

How much money will I receive?

The Treasury Department released funding allocations for state, territorial, metropolitan city, county, and Tribal governments on May 10, 2021. The following links will take you directly to specific allocation tables and methodology explanatory material.

- Allocations for Counties
- Allocation Methodology for Counties
- Allocations for Metropolitan Cities
- Allocation Methodology for Metropolitan Cities
- Allocations for States
- Allocation Methodology for States
- Allocation Methodology for Tribal Governments

At this time, funding amounts for non-entitlement units of local government (NEUs) are available only in aggregate at the state level. Treasury expects to provide further guidance on distributions to NEUs in the coming days. Additional information for NEUs can be found here.

The Interim Rule also allows Fiscal Recovery Funds recipients to transfer funds to private nonprofit groups, special purpose units of state or local governments (or special districts), or public benefit corporations involved in the transportation of passengers or cargo. Recipients are also authorized to transfer Fiscal Recovery Funds to other constituent units of government (e.g., a county can transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. ARPA also provides for transfers by a local government to its State or territory.

How do I access the funding?

Metropolitan cities, counties, and Tribal governments

As of May 10, metropolitan cities, counties, and Tribal governments may request their allocation of Coronavirus State and Local Fiscal Recovery Funds through the Treasury Submission Portal.

To complete a submission on behalf of your jurisdiction, you will be asked to provide the following information:

- Jurisdiction name and address, taxpayer ID number, DUNS Number, and SAM.gov account (Note: non-entitlement units of local government are not required to have a SAM.gov account.)
- Authorized representative name, title, and email
- Contact person name, title, phone, and email
- Fund transfer information, including recipient's financial institution, address, phone, routing number, and account number
- Completed certification document (to be signed by the authorized representative)

Jurisdictions must submit a request to receive funding even if they have previously applied for other programs through the Treasury Submission Portal. Eligible jurisdictions will receive further communication regarding the status of their submission via the email address provided in the Treasury Submission Portal.

Non-entitlement units of government

NEUs (generally local governments with populations of less than 50,000) do not request their allocation through the Treasury Submission Portal. Instead, NEUs will receive their allocations through their state governments. State governments will be responsible for disbursing these funds to NEUs within their states, without additional restrictions or conditions applied by the states.

NEUs will be required to provide the following to their states for disbursement:

- DUNS number
- Authorized representative name, title, and email
- Fund transfer information, including recipient's financial institution, address, phone, routing number, and account number

Treasury will disburse NEUs' allocations to states following the release of further guidance. States are required to distribute funds to NEUs within 30 days unless granted an extension by Treasury. States are required to ensure that the allocation to a NEU does not exceed 75% of the NEU's most recent annual budget (defined as the most recent annual total operating budget, including general fund and other funds, as of January 27, 2020).

NEUs with further questions should contact their state government once Treasury has issued further guidance on distributions.

DUNS and SAM

All recipients must obtain a DUNS number. An entity that does not have a valid DUNS number should visit https://fedgov.dnb.com/webform/ or call 1-866-705-5711 to begin the registration process.

Next, all recipients, except NEUs, must have an active registration with the System for Award Management (SAM) database at SAM.gov. SAM is the official government-wide database with which to register in order to do business with the federal government. All federal financial assistance recipients must register on SAM.gov and renew their SAM registration annually to maintain an active status to be eligible to receive federal financial assistance. There is no charge to register or maintain an entity's SAM registration. An entity that does not have an active SAM registration should visit SAM.gov to begin the entity registration or renewal process. Please note that completing a new SAM.gov registration can take up to three weeks.

How can I spend the funding?

Within the categories of eligible uses, recipients have broad flexibility to decide how best to use this funding to meet the needs of their communities. Recipients may use Fiscal Recovery Funds to:

- **Support public health expenditures** by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff; or **address negative economic impacts caused by the public health emergency**, including economic harm to workers, households, small businesses, impacted industries, and the public sector.
- **Replace lost public sector revenue**, using recovery funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic.

- **Provide premium pay for essential workers**, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical sectors.
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

The Interim Final Rule clearly states that certain uses that may not be within the scope of one of the categories listed above may be eligible under another eligible use categories.

Respond to the public health emergency or its negative economic impacts

Support public health expenditures

Recipients may utilize Fiscal Recovery Funds to meet and address emergent public health needs, including undertaking measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. The Interim Final Rule identifies a non-exclusive list of eligible uses of funding to respond to the public health emergency. Eligible uses build and expand upon permissible expenditures under the Coronavirus Relief Fund (CRF). If not on the list, the guidance recommends recipients assess whether additional uses would be eligible under this category by (1) identifying an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and (2) assess how the use would respond to or address the identified need. The non-exclusive list of uses includes:

- **COVID-19 Mitigation and Prevention:** Mitigation and prevention efforts for COVID-19 including vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; support for vulnerable populations to access medical or public health services; public health orders enforcement; public communication efforts; and purchase of personal protective equipment. Also included are capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.
- **Medical Expenses:** Funds may be used to continue to provide care and services to address near- and long-term needs resulting from the COVID-19 public health emergency. This includes actions to better understand the potentially serious and long-term effects of the virus, including symptoms like shortness of breath, multi-organ impacts, or for post-intensive care syndrome.
- **Behavioral Health Care:** These services include mental health treatment, substance misuse treatment, other behavioral health services – including access to services for victims of domestic violence, hotlines or warmlines, crisis intervention, overdose intervention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.
- **Public Health and Safety Staff:** Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency. For administrative convenience, the guidance allows recipients to consider public health and safety

employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered.

- **Expenses to Improve the Design and Execution of Health and Public Health Programs:** Funds may be used to engage in planning and analysis to improve programs addressing the COVID-19 pandemic, including using targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Address negative economic impacts caused by the public health emergency

Fiscal Recovery Funds enable governments to provide a wide range of assistance to individuals and households, small businesses, and impacted industries, in addition to enabling governments to rehire public sector staff and rebuild capacity.

Where there has been a negative economic impact resulting from the public health emergency, governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. If not specifically listed below, the guidance informs recipients to (1) assess whether, and the extent to which, there has been economic harm (like loss of earnings or revenue) resulting from the pandemic; and (2) whether the use would respond to or address the harm. Responses must be related and reasonably proportional to the extent and type of harm experience. The guidance cautions that uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible.

Households and Individuals

Fiscal Recovery Funds can be used to deliver assistance to workers and families**,** including:

- Assistance to unemployed workers, including services like job training. These services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- Assistance to households, including:
    - Food assistance
    - Rent, mortgage, or utility assistance
    - Counseling and legal aid to prevent eviction or homelessness
    - Cash assistance
    - Emergency assistance for burials, home repairs, weatherization, or other needs
    - Internet access or digital literacy assistance
    - Job training to address negative economic or public health impacts experienced due to a worker’s occupation or level of training
    - Providing survivor’s benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.

Small Businesses

Fiscal Recovery Funds can be used to support small businesses and non-profits, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs.
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs.
- Technical assistance, counseling, or other services to assist with business planning needs.
- Loan, grant, in-kind assistance, and counseling programs to enable small businesses to rebound from the downturn.

Impacted Industries

Fiscal Recovery Funds can be used to support the recovery of the tourism, travel, and hospitality sectors, including:

- Assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services.
- Improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.
- Aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID-19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

Rebuilding Public Sector Capacity

Fiscal Recovery Funds can be used to rebuild public sector capacity, including:

- Payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.
- Replenishing Unemployment Insurance (UI) trust funds up to pre-pandemic levels.
- Improving the efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.

Hardest Hit Communities

In addition to the uses of funding described above, recipients may utilize Fiscal Recovery Funds to address the disproportionate public health and economic impacts of the crisis on the hardest-hit communities, populations, and households. Governments may use Fiscal Recovery Funds to support the additional services described below if they are provided:

- Within a Qualified Census Tract[1]

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[1] The definition of a Qualified Census Tract is contained within 26 U.S.C. 42(d)(5)(B)(ii)(l): *The term "qualified census tract" means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and*

- By a Tribal government; or,
- To other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Eligible services available to the hardest hit communities include:

- **Addressing health disparities and the social determinants of health**, such as:
  - Funding community health workers to help community members access health services and services to address the social determinants of health.
  - Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services.
  - Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness.
  - Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children.
  - Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.
- **Investments in housing and neighborhoods**, including:
  - Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals.
  - Affordable housing development to increase supply of affordable and high-quality living units.
  - Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.
- **Addressing educational disparities**, including:
  - New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services.
  - Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies.
  - Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs.
  - Evidence-based practices to address the social, emotional, and mental health needs of students.
- **Promoting healthy childhood environments**, including:
  - New or expanded high-quality childcare to provide safe and supportive care for children.
  - Home visiting programs to provide structured visits from healthcare, parent educators, and social service professionals to pregnant women or families with young children to offer

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Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

education and assistance navigating resources for economic support, health needs, or child development.
  - Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

Replace lost public sector revenue

Public sector "general revenue" may be replaced with Fiscal Recovery Funds to provide government services. This amount is limited to the amount of revenue lost as a result of the pandemic. There is a formula outlined below that must be utilized to determine the amount of lost general revenue.

General Revenue Defined

"General revenue" is defined broadly, allowing recipients to calculate revenue by summing across many revenue streams. General revenues also include intergovernmental transfers between State and local governments; this provision recognizes the importance of State transfers for local government revenue. Excluded revenue includes proceeds from the issuance of debt or the sale of investments, and revenue generated by utilities. Intergovernmental transfers from the federal government are also excluded.

In line with the broad definition of "general revenue," sources such as outside concessions that contract with the recipient may be covered. For example, revenues from swimming pools, recreational marinas, golf courses, museums, and zoos are likely covered by the definition, as are auxiliary facilities in public recreation areas, such as refreshment stands and gift shops. Also, leases or use fees from stadiums, auditoriums, and community and convention centers are also likely covered under the definition. In addition to Fiscal Recovery Funds, the federal government also has a grant program specifically aimed at closed venue relief; please contact us if you have questions regarding this grant program.

Loss Calculation

Revenue loss is determined by comparing (a) actual pandemic-era revenue, to (b) an estimate of revenue if the pandemic had not occurred.

To determine estimated revenue, recipients may use either a formula based upon their average annual revenue growth OR 4.1%, whichever is higher. ARPA recipients may *presume* that any loss using this formula is due to the COVID-19 public health emergency; in other words, recipients need not demonstrate that reduction in revenue is due to the public health emergency.

Some ARPA recipients have or will experience revenue losses later than others, and ARPA allows recipients to re-calculate revenue loss at several points through the program to account for variations in the timing of economic impact. Importantly, once a shortfall in revenue is identified, recipients will have broad latitude to use this funding to support government services, up to the amount of lost revenue.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023.

There is the four-step process ARPA recipients will use to determine the amount of revenue loss:

Step 1: Identify revenues collected in the most recent full fiscal year prior to January 27, 2020, called the base year revenue.

Step 2: Estimate "counterfactual revenue" (i.e., revenue reasonably expected to have been realized absent the pandemic). Counterfactual revenue is equal to base year revenue. Base year revenue is [(1 + growth adjustment) ^ (n/12)], where "n" is the number of months elapsed since the end of the base year to the calculation date, and growth adjustment is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.

Step 3: Identify actual revenue, which equals revenues collected over the past twelve months as of the calculation date.

Step 4: Subtract the actual revenue from the counterfactual revenue to determine the extent of the reduction in revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

Eligible Uses

Generally, recipients have broad latitude to use funds for the provision of government services. Eligible uses include, for example, maintenance of infrastructure or pay-go spending[2] for building new infrastructure, including roads, modernization of cybersecurity, health services, environmental remediation, school or educational services, and the provision of public safety services (e.g., police and fire).

However, there are some restrictions on uses. For instance, paying interest on principal on outstanding debt, replenishing rainy day funds, or paying settlements or judgments are not eligible. A general infrastructure project typically would *not* be considered a response to the COVID emergency *unless* the project responds to a specific pandemic-related public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact of the pandemic (e.g., affordable housing). ARPA funds may not be used as a non-federal match for other federal programs if the program bars the use of federal funds to meet matching requirements.

Provide premium pay for essential workers

Fiscal Recovery Fund payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work. These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities. Such workers include:

- Staff at nursing homes, hospitals, and home care settings
- Workers at farms, food production facilities, grocery stores, and restaurants
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff

[2] Pay-go infrastructure funding is funding capital projects with cash-on-hand and not borrowed funds.

- Childcare workers, educators, and other school staff
- Social service and human services staff

To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the Rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work, and accordingly may not receive premium pay, for telework performed from a residence.

ARPA defines premium pay to mean an amount of **up to $13 per hour** in addition to wages or renumeration the worker otherwise receives in an aggregate amount not to exceed $25,000 per eligible worker. Any premium pay or grants provided using Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

If premium pay would increase a worker's total pay above **150 percent** of their residing state's average annual wage for all occupations or their residing county's average annual wage, whichever is higher, on an annual basis, the local government must provide Treasury a written justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency.

Premium pay may also be provided **retrospectively** for work performed at any time since the start of the COVID-19 public health emergency, where those workers have yet to be compensated adequately for work previously performed. Treasury encourages recipients to prioritize providing retrospective premium pay where possible. Essential workers who have already earned premium pay for essential work performed during the public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

Invest in water, sewer, and broadband infrastructure

Water and Sewer

Recipients may use the Fiscal Recovery Funds to make necessary investments in water and sewer infrastructure. The Interim Final Rule explains that "[b]y permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health."

The Interim Final Rule provides important details on how the funds should be used for water and sewer projects:

- In the rule, Treasury aimed to give governments "wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities." The rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of project types that would be eligible to receive assistance through the EPA's Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).
- As a reminder, the types of projects eligible for assistance under the CWSRF include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution. A full list of eligible CWSRF project categories can be found here.

- For the DWSRF, a wide range of water infrastructure capital improvements are eligible, including the installation and replacement of treatment and distribution systems, storage, replacement of lead service lines, development of new water sources, wells, aquifer storage and recovery, and consolidation projects, among others. A full list of eligible DWSRF project categories can be found here.
- Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.
- Treasury encourages investment in several types of projects, including the replacement of lead service lines and projects that address climate change. Climate change-related projects are those that that reduce the energy required to treat water by managing potential sources of pollution and projects that conserve or reuse water are eligible. In addition, Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces.
- In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.
- Projects on privately-owned infrastructure are eligible.
- Treasury encourages recipients to ensure that water and sewer projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, "not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers."
- Regarding reporting, the rule states, "[t]o provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water [and] sewer…projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date."

Broadband

Recognizing the acute need in certain communities, Treasury's Interim Final Rule provides that investments in broadband be made in areas that are currently unserved or underserved—in other words, lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload. The Interim Final Rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project. Treasury recognized that different communities and their residents may have a broad range of internet needs and that those needs may change over time. Additionally, Treasury is encouraging recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

The Interim Final Rule provides important details on how the funds should be used for broadband projects:

- Using these funds, recipients are encouraged to prioritize projects that achieve last-mile connections to households and businesses.

- Recipients generally should build broadband infrastructure with modern technologies in mind and are encouraged to prioritize fiber optic investments.
- Projects should deliver services offering reliable 100 Mbps download and 100 Mbps upload speeds, unless impracticable due to topography, geography, or financial cost.
- In those instances when not practicable, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.
- In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, to avoid duplication of efforts and resources.
- Treasury encourages recipients to ensure that broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.

Treasury recommended the speed thresholds to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and sufficiently robust to meet increasing household demands for bandwidth.

In view of the wide disparities in broadband access, assistance to households to support internet access or digital literacy is an eligible use to respond to the public health and negative economic impacts of the pandemic, as detailed above.

Environmental Review for Infrastructure Projects

It is important to note the National Environmental Policy Act (NEPA) does not apply to Treasury's administration of funds for infrastructure projects under ARPA. However, if those projects are also funded by other federal programs, a NEPA review will still apply.

Is there anything I can't spend the funding on?

To ensure that resources provided by the Fiscal Recovery Fund are being used for their intended purpose, the American Rescue Plan also identified ineligible uses of funds.

Treasury has primarily highlighted that states and **territories may not use funds to directly or indirectly offset a reduction in net tax revenue** due to a change in law from March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent. ARPA ensures that funds needed to provide vital services and support public employees, small businesses, and families struggling to make it through the pandemic are not used to fund a reduction in net tax revenue.

If a state or territory cuts taxes, they **must demonstrate how they paid for the tax cuts** from sources other than Local Recovery Funds – by enacting policies to raise other sources of revenue by cutting spending or through higher revenue due to economic growth. If funds provided have been used to offset tax cuts, the amount used for this purpose must be paid back to Treasury.

Additionally, **no recipient may use Fiscal Recovery Funds to make deposits to a pension fund**. The Interim Final Rule defines a "deposit" as an extraordinary contribution to a pension fund to reduce an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions for employees whose wages and salaries are an eligible use of funds.

Other ineligible uses include **funding debt services**, **legal settlements or judgments**, and **deposits to rainy day funds or financial reserves**. General infrastructure spending is not covered as an eligible use outside of waters, sewer, and broadband investments or above the amount allocated under the revenue loss provision. While the program offers broad flexibility to recipients to address local conditions, these restrictions will help ensure that funds are used to augment activities and address pressing needs.

What are the reporting requirements?

Treasury's Interim Rule also established required reporting mechanisms for the use of funding administered from the ARPA. These requirements include:

- Direct recipients must submit one Interim Report and thereafter quarterly Project and Expenditure reports through December 31, 2026 (the end of the award period).
- Direct recipients with a population more than 250,000 will also be required to submit an annual Recovery Performance Plan to Treasury.
- NEUs are not required to submit an Interim Report or Recovery Performance Report. However, NEUs will be required to submit annual Project and Expenditure reports through December 31, 2026.
- Financial records and supporting documents must be kept for five years after all funds are expended.

When will we receive our funds?

Treasury's Submission Portal is now open for direct recipients. Once a recipient's representative provides the required information, Treasury will take approximately four business days to verify. After verification is complete, the recipient's point of contact will receive an email that their submission has been verified and payments will generally be scheduled for the next business day.

NEUs must wait for further guidance from Treasury. However, once allocations and guidance are released, states will have 30 days to release payments to NEUs unless an extension is granted by the Secretary of Treasury.

Finally, unless a State has elevated unemployment, allocations will be made in two tranches. The first half of a recipient's allocation will be available upon certification and the second half will be released twelve months thereafter. The reasoning is to encourage recipients to adapt to new developments that may arise over the next year as the recovery evolves. If economic recovery is faster than expected, a recipient may want to dedicate funds to long-term investments. If economic recovery is slower than expected, then a recipient may choose to use additional funds for near-term stimulus.